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UNCLAS SECTION 01 OF 02 THE HAGUE 001453

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JUSTICE FOR DAAG SWARTZ AND OIA/JUDI FRIEDMAN
BRUSSELS FOR KERBER, WONG, RICHARD

E.O. 12958: N/A

TAGS: [PTER](#) [ASEC](#) [KCRM](#) [PREL](#) [CASC](#) [ETTC](#) [XG](#) [NL](#) [EUN](#)

SUBJECT: DUTCH COURT ACQUITS ISLAMIST TERRORIST SUSPECTS

REF: 2002 THE HAGUE 03525

[11.](#) (SBU) Summary: On June 5, the District Court of Rotterdam acquitted all twelve suspects charged (under a variety of statutes) for offenses related to the provision of support to a terrorist organization. This was the second such loss for the government before the same court, following the December 2002 acquittal of four men accused of providing support in a plot to attack the U.S. Embassy in Paris. In the new case, the presiding judge refused to allow "unverified" intelligence information to serve as evidence and disallowed the prosecution's use of "wartime" statutes in a peacetime terrorism case. The prosecutor's office announced that it would appeal the decision because it disagreed with the court's ruling on the use of intelligence. The outcome has strengthened political support in the Netherlands for new laws giving prosecutors new tools in terrorism cases. Amb. Sobel has scheduled meetings with the Justice Minister and attorney general to accelerate existing bilateral cooperation aimed at strengthening Dutch counterterrorism laws. End summary.

A Catch-all of Charges

[12.](#) (SBU) Twelve alleged Muslim extremists, including five Algerians, one Moroccan, one Mauritanian, one Iraqi, one Libyan, one Egyptian and two Dutch nationals of Turkish and Moroccan descent respectively, stood trial before the Rotterdam District Court, Judge S.J. Van Klaveren presiding, on May 12-20. They were charged with participation in a criminal organization, providing assistance to the enemy at times of war, forging travel documents, people smuggling, drug trafficking, violation of the Dutch Arms and Ammunition Act, trafficking in identity documents, and forgery. The prosecution accused them of belonging to radical Islamic networks and engaging in recruitment of young Muslims for "Jihad."

[13.](#) (SBU) During the course of the trial, it became clear that most of the charges could not be proven. Prosecutor Jo Valente was therefore obliged to take the unusual step of dropping most of the charges before the trial concluded. He conceded that he could not prove most charges but that he had nonetheless persevered because of "the seriousness of the threat and impact of terrorist action on society." He argued that it was virtually impossible to corroborate intelligence information as long as suspects do not carry out their plans and refuse to talk. He called the existence of terrorist networks equally hard to prove, and complained about disappointing intelligence cooperation with such countries as France, Germany and Morocco. There was no doubt that most suspects embraced anti-western views and had hardly any ties with Dutch society but the question was whether it could be proven that they actually committed criminal offenses.

Charges Not Proven

[14.](#) (SBU) The Judge had no trouble reaching the same conclusion - that most charges could not be proven. The judge opined that, although it had been established that several defendants maintained contact with each other, it did not appear from either statements that were made by the defendants or intercepted telephone conversations or material found during house searches that they were part of a criminal organization. Nor did he find compelling the prosecution's evidence that this was in fact a "network" organization. He also dismissed the charge of "providing assistance or attempting to provide assistance to the enemy in time of war" because he said the Netherlands was not at war with Afghanistan, the Taliban, Al Qaeda and/or other pro-Taliban fighters during the period covered by the charges.

[15.](#) (SBU) Consequently, he acquitted all suspects, with the exception of two convicted for the possession of forged documents, receiving prison sentences of two and four months

respectively. Four suspects had already been released from custody during the trial because they faced possible prison sentences shorter than the time they had spent in pre-trial detention. The judge ordered the release of the others when he issued his verdict. Several of them, however, were rearrested on charges of illegal immigration.

Limits on Intelligence in the Courtroom

16. (SBU) The case turned in large part on the admissibility of intelligence information. In a previous case, the same court acquitted four suspects on December 18, 2002 (reftel) ruling the prosecutor had failed to corroborate intelligence information. It therefore came as no surprise that the court again decided June 5 to acquit all suspects in light of the absence of any substantive evidence to corroborate intelligence information - the source of which the government declined to reveal in court. Judge Van Klaveren explicitly ruled that intelligence information as such could not serve as evidence of any charge unless its origin and accuracy can be verified.

17. (SBU) The prosecutor's office immediately announced that it would file an appeal against the District Court's decision because it disagreed with the court's ruling that intelligence cannot be used as evidence. Spokesmen for the ruling Christian Democrat (CDA) and Liberal (VVD) parties as well as the opposition Labor and populist List Pim Fortuyn (LPF) parties opined that the law should be changed to permit the use of intelligence information as evidence under certain circumstances. The party spokesmen also endorsed the opinion voiced during the trial by Chief Attorney General Joan de Wijkerslooth, in favor of making recruiting for the "Jihad" a specific criminal offense in the Dutch Criminal Code.

18. (SBU) Comment: Justice Minister Piet Hein Donner (who supports use of intelligence in court proceedings) has received his wake up call. The outcome of the trial is already helping to galvanize governmental, parliamentary, and public support for new judicial tools to target terrorism. Embassy is consulting with the Dutch on "best practices" - e.g., means of establishing a mechanism for the use of intelligence information in court; strengthening action on terrorist financing; expanding the nascent use of undercover infiltrants in terrorism cases. In the wake of this ruling, Amb. Sobel has scheduled meetings with Justice Minister Donner and Chief Attorney General De Wijkerslooth to accelerate existing bilateral cooperation aimed at strengthening Dutch counterterrorism laws. We will look to Washington agencies for support and expertise. End Comment.